

STATE OF TENNESSEE

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Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

February 9, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

IN RE TARIFF TO RECLASSIFY RATE GROUPINGS OF CERTAIN BELLSOUTH
EXCHANGES --- TARIFF NO 2004-0055, DOCKET NO 04-00015

Dear Chairman Tate

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Reply in regards to Docket No 04-00015. Kindly file same in this docket. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615)532-2590. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Shirley".

JOE SHIRLEY
Assistant Attorney General

CC All Parties of Record
66649

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

TARIFF TO RECLASSIFY RATE)
GROUPING OF CERTAIN BELL SOUTH)
EXCHANGES — TARIFF NO. 2004-0055)
)

DOCKET NO. 04-00015

CONSUMER ADVOCATE AND PROTECTION DIVISION'S REPLY

Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (hereinafter "Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A), and hereby submits the Consumer Advocate and Protection Division's Reply.

I. INTRODUCTION

At 4:46 p.m. on Friday, February 6, 2003, the Consumer Advocate received service of *BellSouth's Telecommunications, Inc.'s Response to Complaint of Consumer Advocate Division Regarding Regrouping ("Response")*, which BellSouth Telecommunications, Inc. ("BellSouth") filed in the above-styled matter. Because BellSouth's *Response* contains several inaccuracies and misstatements, the Consumer Advocate is compelled to submit the following reply.

II. REPLY

A. BELLSOUTH IS INCORRECT WHEN IT STATES THAT THE CONSUMER ADVOCATE HAS FAILED TO ARTICULATE ANY SPECIFIC MATTER WHERE FACTUAL INFORMATION IS NEEDED.

BellSouth claims that the Consumer Advocate has not raised any issues of fact. *See Response* at 1-2. This is incorrect. The Consumer Advocate has raised the issue of whether BellSouth's tariff would cause prices that residential customers for basic local telephone service to increase at a rate greater than the national inflation rate. *See Complaint and Petition to Intervene* at ¶22. Whether

increases in rates that certain customers pay for basic telephone service outpace the national inflation rate is an issue that cannot be resolved without findings of fact. Such pertinent facts include, but are not necessarily confined to: (1) residential rates of affected customers before the tariff is approved and effective, (2) residential rates of affected customers after the tariff is approved and effective, (3) the rate of increase in residential rates resulting from approval of the tariff, and (4) the applicable national inflation rate referenced in the law. *See Tenn. Code Ann. 65-5-209(f)* (Supp. 2003).

In addition, the Consumer Advocate has raised the issue of whether BellSouth's tariff would permit BellSouth to collect more aggregate revenues than allowed by its price regulation plan in violation of the law. *See Complaint and Petition to Intervene* at ¶23. Likewise, whether BellSouth's aggregate revenues exceed its aggregate revenue cap is an issue that cannot be resolved without findings of fact. Such pertinent facts include, but are not necessarily confined to: (1) the amount of aggregate revenues before the tariff is approved and effective, (2) the amount of aggregate revenues after the tariff is approved and effective; (3) the amount of applicable revenues resulting from approval of the tariff, and (4) the amount of aggregate revenues permitted by BellSouth price regulation plan under the law. *See Tenn. Code Ann. 65-5-209(e)* (Supp. 2003).

BellSouth is simply incorrect when it states that the Consumer Advocate's concerns can be addressed without considering any factual information.

B. BELLSOUTH'S INTERPRETATION OF PRICE-REGULATION LAW IS ERRONEOUS.

BellSouth suggests that because, according to BellSouth, its tariff is not a rate increase this matter is not governed by price regulation law. Rather, BellSouth claims that its tariff is a mere correction of rates that places customers at their just and reasonable rate levels previously approved by the Tennessee Regulatory Authority ("TRA"). *See Response* at 2-3.

BellSouth's position that the tariff represents a mere "correction" of rates rather than an increase in rates is not well taken. The simple facts are these. If this tariff is approved and allowed to become effective (1) thousands of Tennessee consumers will dig deeper into their pockets and pay more to BellSouth in order to receive the same basic local telephone service that they receive today; and (2) BellSouth will deposit more money into its coffers and the company's accountants will report more aggregate revenues attributable to BellSouth's provisioning of basic local telephone service in Tennessee. While the company may want to refer to this tariff program as "a correction of rates," the Consumer Advocate is confident that affected consumers will refer to it as most people would — "an increase in rates."

Notwithstanding the label attached to this rate increase or rate correction, however, the State's price regulation law still controls the situation. BellSouth apparently believes that its skills in semantics can allow it to escape the strictures of price regulation. There is no merit in this position. Because customers will pay more money and BellSouth will collect more money if this tariff is approved, the TRA must reconcile the tariff with price regulation law and must consider the impact of the tariff on BellSouth's price regulation plan. Neither the statute nor the case law talk strictly in terms of "rate increases" as BellSouth's argument would suggest. Tenn. Code Ann. § 65-5-209(b) states that all "charge[s] and collect[ions]" are governed by the price regulation requirements of Tenn. Code Ann. § 65-5-209. See Tenn. Code Ann. § 65-5-209(b) (Supp. 2003). Tenn. Code Ann. § 65-5-209(e) states that rate "adjustments" must comply with subsection 209(e) requirements. See Tenn. Code Ann. § 65-5-209(e) (Supp. 2003). And the Court of Appeals state that rate "change[s]" are governed by Tenn. Code Ann. § 65-5-209(e)-(g). See *Consumer Advocate Div. v. Tennessee Regulatory Auth.*, 2000 WL 1514324 at *1-2 (Tenn. Ct. App. 2000). Thus, the specific labels that are attached to this tariff are unimportant. Its effect on consumers, however, is

important Price regulation requirements were imposed in part to protect the pocketbooks of consumers, and the law's protection in this regard extends to all of BellSouth's rate corrections, rate increases, rate charges and collections, rate adjustments, and rate changes

C. BELLSOUTH IS INCORRECT WHEN IT SUGGESTS THAT THE CONSUMER ADVOCATE HAS PRESENTED SOLELY A LEGAL ISSUE THAT CAN BE RESOLVED WITHOUT A CONTESTED CASE PROCEEDING.

As described in Sections II A and II.B , *supra*, the Consumer Advocate's has raised more than the sole legal issue of whether BellSouth's tariff constitutes a rate increase governed by price regulation law However, even assuming *arguendo* that the Consumer Advocate had raised only a sole legal issue, the matter cannot be resolved outside of a contested case proceeding Apparently, BellSouth takes the position that contested case proceedings are reserved only for cases involving matters of fact and that no such proceeding is required to address matters of law *See Response* at 1-2 This is incorrect Contested case proceedings are required to address all contested issues of fact and/or law The TRA cannot simultaneously deny a contested case and then decide that matter on the merits In other words, denying a contested case at this stage of the matter necessarily means that the petition is legally insufficient and that there was nothing to decide on the merits

When contested issues of law are presented to the TRA for resolution, a contested case proceeding must be convened to address the parties' dispute This is so because the determination of the legal issue in dispute may affect the legal rights, duties or privileges of the petitioner and respondent Thus, a contested case format, including all the legal rights, protections and safeguards associated with such proceedings, are required to address the controversy *See Tenn Code Ann §§ 4-5-102(3), 4-5-310, 65-2-101(2); 65-2-107 (1998 & Supp 2003)*

III. CONCLUSION


If approved, BellSouth's tariff will cause thousands of Tennessee consumers to pay more for

basic local telephone service than they currently pay The Consumer Advocate has filed a complaint against the tariff which raises serious concerns about the validity of BellSouth's tariff proposal The complaint that has been filed in this docket meets the requirements of the TRA's rules and is procedurally and legally sufficient in every respect The Consumer Advocate therefore requests the TRA to convene a contested case hearing and grant the Consumer Advocate's petition so that consumers may challenge the illicit price hikes that BellSouth seeks to impose upon them.

RESPECTFULLY SUBMITTED,

PAUL G SUMMERS, B P R #6285

Attorney General
State of Tennessee



JOE SHIRLEY, B P R #022287

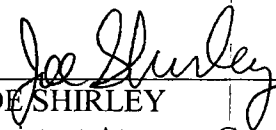
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P O Box 20207
Nashville, Tennessee 37202
(615) 532-2590

Dated February 9, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via facsimile or first-class U S Mail, postage prepaid, on February 9, 2004, upon

Guy M Hicks, Esq
BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, Tennessee 37201-3300



JOE SHIRLEY
Assistant Attorney General